

§ 585.40

12 CFR Ch. V (1–1–08 Edition)

§ 585.40 What convictions or agreements to enter into pre-trial diversions or similar programs are covered by this part?

(a) *Covered convictions and agreements.* Except as described in § 585.50, this part covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust.* A determination whether a criminal offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) “Dishonesty” means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

(2) “Breach of trust” means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

§ 585.50 What adjudications and offenses are not covered by this part?

(a) *Youthful offender or juvenile delinquent.* This part does not cover any ad-

judication by a court against a person as:

(1) A youthful offender under any youthful offender law; or

(2) A juvenile delinquent by a court with jurisdiction over minors as defined by state law.

(b) *De minimis criminal offense.* This part does not cover *de minimis* criminal offenses. A criminal offense is *de minimis* if:

(1) The person has only one conviction or pretrial diversion or similar program of record;

(2) The offense was punishable by imprisonment for a term of less than one year, a fine of less than \$1,000, or both, and the person did not serve time in jail.

(3) The conviction or program was entered at least five years before the date the person first held a position described in § 585.30(a); and

(4) The offense did not involve an insured depository institution, insured credit union, or other banking organization (including a savings and loan holding company, bank holding company, or financial holding company).

(5) The person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

(6) The person must be covered by a fidelity bond to the same extent as others in similar positions with the savings and loan holding company.

Subpart B—Exemptions

§ 585.100 Who is exempt from the prohibition under this part?

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in § 585.30, if all of the following conditions are met:

(1) The employee’s responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations.

(2) The savings and loan holding company maintains a list of all policy-making positions and reviews this list annually.

(3) The employee’s position does not appear on the savings and loan holding

company's list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.

(4) The employee:

(i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.

(ii) Does not own or control, directly or indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.* (1) Any prohibited person who was an institution-affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on March 1, 2008, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of an OTS order approving the application under § 585.130(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 585.130(b) provided there is no timely request for hearing following the issuance of an OTS order denying the application under that section;

(iii) The date that OTS denies a timely request for hearing under § 585.140(a) following the issuance of an OTS order denying the application under § 585.130(b);

(iv) The date that the Director issues a decision under § 585.140(d); or

(v) The date an applicant withdraws the application.

[72 FR 25955, May 8, 2007, as amended at 72 FR 50645, Sept. 4, 2007]

§ 585.110 How do I apply for a case-by-case exemption?

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 585.40 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense ("you") may file an application seeking an OTS order granting an exemption from the prohibitions in this part.

(2) You may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) You may not file an application less than one year after the latter of the date of OTS's denial of the same exemption under § 585.130(b), § 585.140(a)(2) or § 585.140(d).

(b) *Application and review procedures.* You may seek OTS approval by filing your application with OTS under the standard treatment described in 12 CFR part 516, subpart A of this chapter. OTS will review your application under 12 CFR part 516, subpart E of this chapter (excluding 12 CFR 516.270 and 516.280).

(c) *Prohibition pending OTS action.* Unless you are exempt under § 585.100(b), the prohibitions in § 585.30 continue to apply pending OTS action on your application.

§ 585.120 What factors will OTS consider in reviewing my application?

(a) *OTS review.* (1) In determining whether to approve an exemption application filed under § 585.110, OTS will consider the extent to which the position that is the subject of your application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) OTS will also consider whether you have demonstrated the person's fitness to hold the described position. Some positions may be approved without an extensive review of a person's